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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

K.A.,

Plaintiff,

vs.

MINDGEEK S.A.R.L. a foreign entity; MG
FREESITES, LTD., a foreign entity;
MINDGEEK USA INCORPORATED, a
Delaware corporation; MG PREMIUM LTD, a
foreign entity; MG GLOBAL
ENTERTAINMENT INC., a Delaware
corporation; 9219-1568 QUEBEC, INC., a
foreign entity; BERND BERGMAIR, a foreign
individual; FERAS ANTOON, a foreign
individual; DAVID TASSILLO, a foreign
individual; VISA INC., a Delaware
corporation; REDWOOD CAPITAL
MANAGEMENT, LLC, a Delaware limited
liability company; REDWOOD DOE FUNDS
1-7; COLBECK CAPITAL MANAGEMENT,

CASE NO. 2:24-cv-4786

**REDWOOD
DEFENDANTS' OMNIBUS
REPLY IN SUPPORT OF
MOTION TO DISMISS
COMPLAINTS IN
RELATED CASES**

Date: January 31, 2025
Time: 1:30 p.m.
Place: Courtroom 9B
Judge: Hon. Wesley L. Hsu

SAC filed: May 23, 2024

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REDWOOD DEFENDANTS' OMNIBUS REPLY ISO MOTION TO DISMISS

1 LLC, a Delaware company, COLBECK DOE
2 FUNDS 1-3,

3 Defendants.
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27
28

TABLE OF CONTENTS

		Page
1		
2		
3	I. Introduction	1
4	II. Plaintiffs’ Complaints Should be Dismissed Because Plaintiffs Lack	
5	Article III Standing.....	2
6	III. Plaintiffs’ Complaints Should be Dismissed Under Rule 12(b)(6).....	7
7	A. Plaintiffs Have Not Stated a TVPRA Claim Against Redwood.....	7
8	B. Plaintiffs’ Hybrid UCL/FAL Claim is Not Legally Viable.....	24
9	C. Plaintiffs Fail to State a Claim for Intentional Infliction of	
10	Emotional Distress.	26
11	D. Plaintiffs Fail to State a Claim for Civil Conspiracy.....	28
12	IV. Conclusion.....	30
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Acevedo v. eXp Realty, LLC</i> , 713 F. Supp. 3d 740 (C.D. Cal. 2024)	15
<i>Associated Gen. Contractors of Cal., Inc. v. Cal. Council of Carpenters</i> , 459 U.S. 519 (1983)	10
<i>B.J. v. G6 Hosp., LLC</i> , 2023 WL 3569979 (N.D. Cal. May 19, 2023)	12
<i>B.M. v. Wyndham Hotels & Resorts, Inc.</i> , 2020 WL 4368214 (N.D. Cal. July 30, 2020)	12, 17, 18
<i>Barnett v. County of Los Angeles</i> , 2021 WL 826413 (C.D. Cal. Mar. 4, 2021)	18
<i>Bonacasa v. Standard Chartered PLC</i> , 2023 WL 2390718 (S.D.N.Y. Mar. 7, 2023)	9
<i>Brill v. Chevron Corp.</i> , 2017 WL 76894 (N.D. Cal. Jan. 9, 2017)	4
<i>Cady v. Anthem Blue Cross Life & Health Ins.</i> , 583 F. Supp. 2d 1102 (N.D. Cal. 2008)	7
<i>Chang v. Wachovia Mortg., FSB</i> , 2011 WL 5552899 (N.D. Cal. Nov. 15, 2011)	27
<i>Christensen v. Superior Court</i> , 54 Cal. 3d 868 (1991)	27
<i>City of Los Angeles v. Wells Fargo & Co.</i> , 22 F. Supp. 3d 1047 (C.D. Cal. 2014)	7
<i>Compound Prop. Mgmt., LLC v. Build Realty, Inc.</i> , 462 F. Supp. 3d 839 (S.D. Ohio 2020)	29
<i>Craigslist Inc. v. 3Taps Inc.</i> , 942 F. Supp. 2d 962 (N.D. Cal. Apr. 30, 2013)	30

1	<i>Doe I v. Deutsche Bank Aktiengesellschaft,</i>	
2	671 F. Supp. 3d 387 (S.D.N.Y. 2023)	18
3	<i>Doe I v. Apple Inc.,</i>	
4	2021 WL 5774224 (D.D.C. Nov. 2, 2021), <i>aff'd</i> , 96 F.4th 403 (D.C. Cir.	
5	2024).....	19, 20, 21
6	<i>Doe (L.M.) v. 42 Hotel Raleigh, LLC,</i>	
7	2024 WL 4204906 (E.D.N.C. Sept. 16, 2024).....	8, 14, 15
8	<i>Doe (L.M.) v. 42 Hotel Raleigh, LLC,</i>	
9	717 F. Supp. 3d 464 (E.D.N.C. 2024)	18
10	<i>Doe v. Mindgeek USA Inc.,</i>	
11	558 F. Supp. 3d 828 (C.D. Cal. 2021)	12, 16
12	<i>Does 1-6 v. Reddit, Inc.,</i>	
13	51 F.4th 1137 (9th Cir. 2022)	8
14	<i>Fleites v. MindGeek S.A.R.L.,</i>	
15	617 F. Supp. 3d 1146 (C.D. Cal. 2022)	<i>passim</i>
16	<i>Ford v. Revlon, Inc.,</i>	
17	153 Ariz. 38 (Ariz. 1987)	28
18	<i>G.G. v. Salesforce.com, Inc.,</i>	
19	76 F.4th 544 (7th Cir. 2023)	12, 13, 15, 18
20	<i>Grant v. WMC Mortg. Corp.,</i>	
21	2010 WL 2509415 (E.D. Cal. June 17, 2010)	27
22	<i>Holmes v. SIPC,</i>	
23	503 U.S. 258 (1992)	9
24	<i>J.B. v. G6 Hosp., LLC,</i>	
25	2020 WL 4901196 (N.D. Cal. Aug. 20, 2020)	12
26	<i>J.C. v. Choice Hotels Int'l, Inc.,</i>	
27	2020 WL 6318707 (N.D. Cal. Oct. 28, 2020)	15, 16, 17
28	<i>Lexmark Int'l, Inc. v. Static Control Components, Inc.,</i>	
	572 U.S. 118 (2014)	10
	<i>Louers v. Lacy,</i>	
	2012 WL 5426442 (D. Md. Nov. 6, 2012)	9

1	<i>Marceau v. Int’l Bhd. of Elec. Workers Local 1269,</i>	
2	2006 WL 1889600 (D. Ariz. July 7, 2006).....	10
3	<i>Maya v. Centex Corp.,</i>	
4	658 F.3d 1060 (9th Cir. 2011).....	2, 3
5	<i>Merriam v. Demoulas,</i>	
6	2013 WL 2422789 (D. Mass. June 3, 2013).....	5
7	<i>Morrison v. Nat’l Austl. Bank Ltd.,</i>	
8	561 U.S. 247 (2010).....	19
9	<i>Nat’l Org. for Women, Inc. v. Scheidler,</i>	
10	510 U.S. 249 (1994).....	5
11	<i>Nw. Mortg., Inc. v. Superior Court,</i>	
12	72 Cal. App. 4th 214 (1999).....	25
13	<i>Oxbow Carbon & Mins. LLC v. Union Pac. R.R. Co.,</i>	
14	81 F. Supp. 3d 1, 7 (D.D.C. 2015).....	5
15	<i>Perez v. Nidek Co.,</i>	
16	711 F.3d 1109 (9th Cir. 2013).....	6
17	<i>Potter v. Firestone Tire & Rubber Co.,</i>	
18	6 Cal. 4th 965 (1993).....	27
19	<i>Ratha v. Rubicon Res., LLC,</i>	
20	111 F.4th 946 (9th Cir. 2024).....	<i>passim</i>
21	<i>RJR Nabisco, Inc. v. Eur. Cmty.,</i>	
22	579 U.S. 325 (2016).....	19, 20, 21
23	<i>Roe v. Howard,</i>	
24	917 F.3d 229 (4th Cir. 2019).....	19, 20
25	<i>S.C. v. Hilton Franchise Holding LLC,</i>	
26	2024 WL 4773981 (D. Nev. Nov. 12, 2024).....	13, 14
27	<i>Sanders v. Model Prods. USA, Inc.,</i>	
28	2015 WL 13914860 (C.D. Cal. Dec. 14, 2015).....	27
	<i>Sepulveda v. City of Whittier,</i>	
	2019 WL 13070119 (C.D. Cal. Aug. 7, 2019).....	27

1	<i>Steel Co. v. Citizens for a Better Env't,</i>	
2	523 U.S. 83 (1998)	7
3	<i>Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.,</i>	
4	802 F. Supp. 2d 1125 (C.D. Cal. 2011)	25, 28
5	<i>Sullivan v. Oracle Corp.,</i>	
6	51 Cal. 4th 1191 (2011)	25
7	<i>T.E. v. Wyndham Hotels & Resorts, Inc.,</i>	
8	2024 WL 474400 (S.D. Ohio Feb. 7, 2024)	15
9	<i>Thinking Liberally Media Inc. v. Orange Juice Blog,</i>	
10	2010 WL 11596144 (C.D. Cal. Nov. 19, 2010)	29, 30
11	<i>Tortilla Factory, LLC v. Humm Kombucha, LLC,</i>	
12	2018 WL 11408921 (C.D. Cal. July 25, 2018)	26
13	<i>United States ex rel. Hawkins v. ManTech Int'l Corp.,</i>	
14	2024 WL 4332117 (D.D.C. Sept. 27, 2024)	20
15	<i>United States v. Lennick,</i>	
16	18 F.3d 814 (9th Cir. 1994)	30
17	<i>Young v. City of Menifee,</i>	
18	No. 5:17-cv-01630-JGB-SP, 2019 WL 3037926 (C.D. Cal. Apr. 5, 2019)	29
19	STATUTES	
20	18 U.S.C. 1595	22
21	18 U.S.C. § 1596	19
22	18 U.S.C § 2257	29
23	Pub. L. No. 110-457, § 223(a), 122 Stat. 5044 (2008)	19
24	RULES	
25	Fed. R. Civ. Proc. 8	27
26		
27		
28		

1 **I. INTRODUCTION¹**

2 Plaintiffs’² Opposition does nothing to address the fatal deficiencies identified
3 by Redwood and this Court’s prior opinion in *Fleites*. Plaintiffs do not dispute that
4 their beneficiary liability allegations cannot survive under this Court’s prior decision,
5 but instead ignore that decision and advocate for the application of inapposite
6 out-of-circuit case law. Plaintiffs also do not dispute that, if ATRA is not retroactive,
7 their conspiracy allegations are insufficient. The plain language of *Ratha v. Rubicon*
8 *Res., LLC*, 111 F.4th 946 (9th Cir. 2024) settles that question. And finally, Plaintiffs
9 still can point to no facts suggesting Redwood’s agreement and intent to aid in a
10 violation of the TVPRA. They instead cling to language that exists in nearly every
11 loan document to conjure up a speculative “ability to control” standard that is without
12 support in the case law. That is patently insufficient.

13 Each of Plaintiffs’ claims against Redwood suffers from at least one fatal legal
14 infirmity. *First*, the Court should adhere to its prior opinion in *Fleites* and controlling
15 Ninth Circuit case law and decline to find beneficiary liability because: (i) Plaintiffs
16 fail to allege *any* relationship (let alone a “continuous business relationship”)
17 between Redwood and the Plaintiffs’ actual traffickers; and (ii) Plaintiffs allege no
18 constructive knowledge on the part of Redwood of *Plaintiffs’* sex trafficking. The
19 lack of any direct relationship between Redwood and Plaintiffs or their traffickers
20 also defeats both standing under Article III and Plaintiffs’ ability to allege proximate
21 causation. *Second*, Section 1595 of the TVPRA does not extend extraterritorially to
22 injuries and harm that occurred outside of the United States. *Third*, Plaintiffs’

23
24 ¹ Pursuant to Dkt. 105, Redwood respectfully submits this reply on behalf of
25 Defendants Redwood Capital Management, LLC, Redwood Master Fund, Ltd,
26 Redwood Opportunity Master Fund, Ltd, Manuel 2018, LLC, Ginogerum, LLC, and
White-Hathaway Opportunity Fund, LLC (collectively, “Redwood” or the
“Redwood Defendants”).

27 ² All capitalized terms herein have the same definitions as set forth in Redwood’s
28 Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiffs’
Complaints in Related Cases. *See* Dkt. 68-1.

1 TVPRA conspiracy claim fails because all of the alleged conduct occurred prior to
2 2023. This Court should reject Plaintiffs' invitation to ignore the Ninth Circuit's
3 clear language and to limit the holding of *Ratha*. *Fourth*, Plaintiffs' generalized
4 conspiracy allegations fail to meet the pleading standard of any published case law.
5 There is no case or doctrine that allows a court to infer an "agreement" or "intent" to
6 aid in a TVPRA violation based solely upon one lender's (among many others')
7 agreement *to provide financing*. That is all that Redwood did. *Fifth*, because
8 Plaintiffs cannot establish beneficiary or conspiracy liability under the TVPRA,
9 Plaintiffs' derivative claims under California's consumer protection statutes and
10 common law civil conspiracy also fail. *Finally*, Plaintiffs cannot state a claim for
11 intentional infliction of emotional distress because they: (i) rely on impermissible
12 group pleading; (ii) fail to offer *any* case law suggesting that Redwood's routine
13 arm's-length financing agreements could conceivably constitute "extreme or
14 outrageous conduct"; and (iii) fail to allege Redwood's conduct was directed towards
15 them or actually and proximately caused their severe emotional distress.

16 Plaintiffs' Complaints should accordingly be dismissed with prejudice.

17 **II. PLAINTIFFS' COMPLAINTS SHOULD BE DISMISSED BECAUSE**
18 **PLAINTIFFS LACK ARTICLE III STANDING³**

19 To allege the traceability element of Article III standing, Plaintiffs must allege
20 a "line of causation" between Redwood's action and Plaintiffs' alleged harm "that is
21 more than 'attenuated.'" *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011)
22 (citation omitted). No such "line of causation" exists here because the connection
23 between Redwood's alleged conduct and Plaintiffs' injuries involved numerous third
24

25 ³ Plaintiffs fully incorporate by reference the arguments made in the *Fleites*
26 Opposition with respect to Article III standing. *See* Dkt. 96-1 ("Opp.") at 67. But
27 these arguments fail for the reasons set forth in Redwood's *Fleites* Motion to Dismiss
28 at Dkt. 450-6 ("*Fleites* Motion") and Reply at Dkt. 495-1 ("*Fleites* Reply"), both of
which are incorporated by reference herein.

1 parties and the Complaints contain no allegations showing that Plaintiffs' CSAM
2 would not have been uploaded if Redwood did not exist. Dkt. 68-1 ("Mot.") at 17
3 (citing *Fleites* Mot. at 14-18). To the contrary, given the [REDACTED] of parties that
4 participated in financing for MindGeek (including some of the world's largest asset
5 managers and banks), MindGeek easily could have obtained financing had Redwood
6 not existed. See *Fleites* Mot. at 8-9.

7 In a misguided attempt to counter this reality, Plaintiffs first argue that the
8 "existence of other lenders in the syndicates does not defeat the centrality of
9 Colbeck's and Redwood's roles to Plaintiffs' harm[.]" Opp. at 67. But this argument
10 is a red herring, as Plaintiffs simply draw *no connection* between the financing
11 provided by Redwood to MindGeek and the harm Plaintiffs suffered *at the hands of*
12 *their traffickers*.⁴ Nor do Plaintiffs directly connect Redwood's financing of
13 MindGeek, on the one hand, to the upload and dissemination of their CSAM, on the
14 other. They merely allege a chain of speculation—specifically, that Redwood *could*
15 *have* [REDACTED], Opp. at 67, which
16 *purportedly would have* left MindGeek with "[REDACTED]
17 [REDACTED]" See *Fleites* Opp. at 59 (incorporated by reference at Opp. at 67).
18 This "hypothetical" and "attenuated" connection is insufficient to establish Article
19 III standing. See *Centex Corp.*, 658 F.3d at 1070 ("A causation chain does not fail
20 simply because it has several 'links,' provided those links are 'not hypothetical or
21 tenuous' and remain 'plausib[le].'").

22
23 ⁴ Plaintiffs state in their Opposition that "Colbeck and Redwood advised and led the
24 syndicates and thus were responsible for bringing other lenders into the financing,"
25 but the Complaints do not allege that Redwood was responsible for bringing other
26 lenders into the financing. Compare Opp. at 67, with K.A. Compl. ¶ 246 ("Colbeck
27 was the initial lead lender that advised and assembled a syndicate of similar hedge
28 funds to finance MindGeek's growth (the 'Colbeck Syndicate'), and Redwood would
become one of the largest financiers.") (emphasis added). Regardless, even if true,
bringing other lenders into the financing of MindGeek is not sufficient to establish a
chain of causation to Plaintiffs' harm for the same reasons as stated above.

1 Additionally, Plaintiffs’ attempt to cobble together a hypothetical chain of
2 causation lacks any legal support. Plaintiffs speculate that Redwood *could have*
3 controlled MindGeek. *See, e.g.,* Opp. at 17-18 (“the Colbeck syndicate owned
4 Manwin and during the term of the financing *had the ability to control* virtually all
5 aspects of the business and receive the vast majority of its earnings[.]”) (emphasis
6 added). But they point to no facts showing an *actual* exercise of control by Redwood
7 over MindGeek. Their allegations also fail common sense. Plaintiffs’ allegations of
8 control depend entirely on loan terms that appear in virtually all lender agreements
9 and allow lenders [REDACTED]. *See id.* at
10 67; Dkts. 450-2 § 6.01(h), 450-3 § 6.01(h). Following Plaintiffs’ logic, anyone
11 harmed by any company’s violation of the law would have standing to sue any of the
12 company’s lenders if the loan agreement has a standard covenant to [REDACTED].
13 Plaintiffs, unsurprisingly, point to no case in any jurisdiction finding that the lenders’
14 right to [REDACTED] in the event a borrower [REDACTED] confers the kind of
15 broad Article III standing to sue lenders that is needed here.

16 Plaintiffs instead cite to *Brill v. Chevron Corp*, 2017 WL 76894 (N.D. Cal. Jan.
17 9, 2017). But *Brill* is distinguishable. In *Brill*, Chevron was alleged to have
18 contributed to financial rewards ultimately provided to suicide bombers, whose
19 families received bounties for the bombings. *Id.* at *3. These bounties were “alleged
20 to have been the single most effective strategy in inciting terrorist acts[.]” (the cause
21 of the plaintiffs’ harm). *Id.* The plaintiffs in *Brill* importantly drew “a connection
22 between those rewards”—alleged to have been partially funded by Chevron—“and
23 the attacks at issue” in the complaint. *Id.* Not so here. Plaintiffs do not allege (nor
24 can they) that Redwood’s funding was used to incentivize Plaintiffs’ trafficking or to
25 monetize CSAM on MindGeek’s sites. The threadbare connection (at best) between
26 Redwood’s provision of part of a financing facility to MindGeek and Plaintiffs’ harm
27 due to the dissemination of their CSAM is legions more tenuous than in *Brill*.
28

1 Plaintiffs next argue it is unimportant that Redwood “did not interact directly
2 with Plaintiffs’ street level traffickers or with her videos,” because “Article III’s
3 traceability requirement does not require that the defendant personally commit the
4 act that harms plaintiff.” Opp. at 67-68. But this divagation answers a question that
5 was not posed. Redwood does not argue that it had to be the trafficker who directly
6 harmed plaintiff in order to incur liability. Instead, Redwood argues that being one
7 of many lenders who provided financing to the website which allegedly interacted
8 with the traffickers is simply too attenuated. *See* Mot. at 15. Plaintiffs fail to
9 substantively address this argument.

10 The cases Plaintiffs cite in support of their contention that Redwood may be
11 held liable for harms not committed by Redwood do not help them. *See* Opp. at 68.
12 In *Merriam v. Demoulas*, 2013 WL 2422789 (D. Mass. June 3, 2013), for example—
13 an unpublished, out-of-circuit decision—the court found that traceability was
14 satisfied under a theory of *vicarious liability*, rather than direct liability such as
15 Plaintiffs have claimed against Redwood here. Specifically, the plaintiffs in *Merriam*
16 alleged that they were directly harmed by the trustee defendants’ irresponsible
17 investment, for which the director defendants were vicariously liable pursuant to the
18 applicable ERISA statute. 2013 WL 2422789, at *4. The court explicitly noted that,
19 because the director defendants would be liable under this ERISA vicarious liability
20 theory, “plaintiffs can maintain Article III standing here without showing that the
21 Director defendants directly harmed them.” *Id.*

22 Additionally, in *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255-
23 56 (1994), the court found plaintiff health care clinics had standing because they
24 alleged that a conspiracy by a coalition of anti-abortion groups to shut down clinics
25 had injured their business and/or property interests. Each of the anti-abortion groups,
26 moreover, shared a common purpose and agreement to shut down the clinics. By
27 contrast, here Redwood never entered into any agreement to traffic Plaintiffs, nor do
28 Plaintiffs even allege any such agreement. Further, *Oxbow Carbon & Mins. LLC v.*

1 *Union Pac. R.R. Co.*, 81 F. Supp. 3d 1, 7 (D.D.C. 2015) is another out-of-circuit case
2 concerning the “injury” component of *antitrust standing* under Section 1 of the
3 Sherman Act—not Article III standing—and thus is irrelevant here. Simply put, and
4 contrary to Plaintiffs’ implications otherwise, allegations of conspiracy or aiding and
5 abetting liability do not permit Plaintiffs to forgo the Article III traceability analysis.
6 *See Perez v. Nidek Co.*, 711 F.3d 1109, 1112-13 (9th Cir. 2013) (rejecting plaintiff’s
7 “endeavor[] to sidestep the traceability hurdle . . . through his allegations of
8 conspiracy and aiding and abetting”).

9 Finally, Plaintiffs argue that Judge Carney’s Article III holding in *Fleites* as to
10 Visa should apply to Redwood. Opp. at 63. This Court’s prior decision, however,
11 actually supports Redwood’s Motion. Judge Carney’s rationale concerned entirely
12 different facts, as Visa was alleged to have been the necessary vehicle for
13 monetization of the plaintiff’s CSAM. Emphasizing that “Plaintiff’s case focuses on
14 the monetization of child porn after it was made and posted to MindGeek’s sites,”
15 Judge Carney held in *Fleites* that Visa was “unobscured by [] third parties” because
16 it “knowingly provid[ed] the means through which MindGeek monetizes child porn
17 once such content is already produced and posted” by “offer[ing] up its payment
18 network” to allow MindGeek’s monetization of Plaintiff’s videos via
19 “advertisements running alongside it[.]” *Fleites v. MindGeek S.A.R.L.*, 617 F. Supp.
20 3d 1146, 1155-56, 1158 (C.D. Cal. 2022). In other words, Article III standing existed,
21 under Judge Carney’s view, because it was alleged that Visa provided “the
22 mechanism through which MindGeek earns profit[]” from child pornography. *Id.* at
23 1156. No similar findings could be made against Redwood, which merely issued a
24 loan to MindGeek and had *no* connection to the “monetization of child porn after it
25 was made and posted to MindGeek’s sites[.]” *See id.* at 1155; *Fleites* Mot. at 16,
26 note 7.

27 Recognizing the futility of their position, Plaintiffs suggest that “[u]ltimately,
28 the extent of Redwood’s and Colbeck’s control over the MindGeek business and its

1 policies is a factual question that requires discovery.” *See* Opp. at 67. But the only
2 case Plaintiffs cite for such a proposition, *City of Los Angeles v. Wells Fargo & Co.*,
3 is inapposite. 22 F. Supp. 3d 1047, 1054 (C.D. Cal. 2014). In *City of Los Angeles*,
4 the court found that Article III standing was sufficiently alleged (and the plaintiff
5 should therefore be afforded an opportunity to conduct discovery) despite
6 independent actions in the causal chain, because “many of the independent actions
7 that Defendants contend defeat causation” were “*produced by or the result of*
8 *Defendants’ challenged conduct.*” *Id.* at 1054 (emphasis added). Not so here.
9 Redwood’s loans did not cause Plaintiffs’ CSAM to be posted. It did not provide the
10 means for monetization. Nor is there any allegation Redwood’s financing was used
11 to directly reward any traffickers. Discovery simply would not further Plaintiffs’
12 case, nor is it appropriate given Plaintiffs’ inadequate allegations. *See Cady v.*
13 *Anthem Blue Cross Life & Health Ins.*, 583 F. Supp. 2d 1102, 1107 (N.D. Cal. 2008)
14 (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-94 (1998)) (denying
15 plaintiff’s request for discovery to determine whether standing exists because the
16 court “cannot assume ‘hypothetical jurisdiction’ to order discovery” where there is
17 no standing). Accordingly, Plaintiffs’ claims against Redwood should be dismissed
18 for failure to allege Article III standing.

19 **III. PLAINTIFFS’ COMPLAINTS SHOULD BE DISMISSED UNDER**
20 **RULE 12(b)(6)**

21 **A. Plaintiffs Have Not Stated a TVPRA Claim Against Redwood.**

22 **1. If This Court Finds MindGeek Immune From Liability**
23 **Under Section 230 of the CDA, Plaintiffs Cannot State a**
24 **Civil TVPRA Claim Against Redwood.**

25 Section 230 of the CDA provides ICSPs such as MindGeek broad immunity
26 from liability for content posted to their websites by third parties. *See* Mot. at 20-21.
27 If this Court finds MindGeek immune from TVPRA liability under Section 230, then
28 Redwood cannot be liable.

1 Plaintiffs argue that Section 230 does not immunize Redwood because their
2 claims “do not treat [Redwood] as the publisher[] or speaker[] of third-party
3 content.”⁵ See Opp. at 59, note 47. But such a contention is irrelevant because “a
4 civil TVPRA venture must include at least one party which criminally violated a
5 statute for which the TVPRA provides civil recourse[.]” See, e.g., *Doe (L.M.) v. 42*
6 *Hotel Raleigh, LLC*, 2024 WL 4204906, at *4 (E.D.N.C. Sept. 16, 2024). If the Court
7 holds that MindGeek is entitled to CDA immunity, that necessarily entails a finding
8 that MindGeek did not criminally violate the TVPRA. See, e.g., *Does 1-6 v. Reddit,*
9 *Inc.*, 51 F.4th 1137, 1137 (9th Cir. 2022) (plaintiffs invoking FOSTA⁶ must
10 “plausibly allege that website’s own conduct violated federal criminal child sex
11 trafficking statute”). Without MindGeek’s alleged criminal conduct then, Plaintiffs
12 cannot establish “*MindGeek’s* trafficking venture”—the civil TVPRA venture of
13 which Redwood is allegedly a part—and the claims against Redwood likewise fail.
14 See K.A. Compl. ¶¶ 51-56 (describing “*MindGeek’s* trafficking venture”) (emphasis
15 added), ¶ 346 (alleging Redwood participated in MindGeek’s trafficking venture).

16 **2. Plaintiffs Failed to Allege Proximate Cause.**

17 Even if MindGeek is not found to be immune from liability under Section 230
18 of the CDA, Plaintiffs lack statutory standing to pursue their TVPRA claims against
19 Redwood because they fail to adequately allege that their injuries were proximately
20 caused by Redwood’s alleged conduct. Mot. at 18, 21-23. Specifically, the
21 Complaints do not—because they cannot—allege that Plaintiffs’ injuries flowed
22 “directly” from any alleged conduct on the part of Redwood.⁷ See *id.* at 22.

23
24 ⁵ Plaintiffs also erroneously argue that Redwood “d[id] not assert a Section 230
25 defense[.]” Opp. at 59, note 47, but Redwood asserted a Section 230 defense in its
26 Omnibus Motion. See Omnibus Mot. at 19-21.

27 ⁶ FOSTA, an amendment to Section 230 of the CDA passed in 2018, “provides that
28 section 230 immunity does not apply to certain sex trafficking claims,” including
Section 1595 of the TVPRA. *Id.* at 1140.

⁷ Plaintiffs respond that they are not required to plead proximate cause with respect
to their TVPRA claims but otherwise only incorporate by reference the arguments

1 Plaintiffs do not dispute that they do not, and cannot, allege that Redwood has
2 had **any** connection with Plaintiffs or their traffickers. Plaintiffs instead argue that
3 they need not plead proximate cause with respect to their TVPRA and conspiracy
4 claims and that, regardless, “the [complaints] allege[] the requisite link between
5 defendant’s conduct and Plaintiff[s’] harm.” *Fleites* Opp. at 62. Plaintiffs are
6 incorrect on both counts.

7 The *Fleites* Opposition⁸ cites two out-of-circuit cases to suggest that the
8 TVPRA does not, in fact, require proximate cause because it is a “remedial statute”
9 that imposes “secondary liability.” Those cases do not so hold. In *Louers v. Lacy*,
10 2012 WL 5426442, at *2-3 (D. Md. Nov. 6, 2012), for instance, the District of
11 Maryland construed a *state statute*. *See id.* at *3 (declining to read a proximate cause
12 requirement into state statute and declining to rely on a case “which applies solely to
13 a federal statute, to establish a new interpretation of State law”). And the court in
14 *Bonacasa v. Standard Chartered PLC* held merely that a different statute (JASTA)
15 “disclaimed any proximate cause requirement.” 2023 WL 2390718, at *14 n.23
16 (S.D.N.Y. Mar. 7, 2023) (emphasizing Congress’ explicit “directive that JASTA
17 liability can flow ‘indirectly’”). The TVPRA contains no such disclaimer.

18 The *Fleites* Opposition also seeks to distinguish the numerous Supreme Court
19 and Ninth Circuit cases reading a proximate-cause, directness requirement into
20 federal statutes as irrelevant. Plaintiffs reason that “unlike the statutes at issue in the
21 cases cited by defendants, the TVPRA is a remedial statute that calls for liberal
22 construction.” *Fleites* Opp. at 61. But the statutes at issue in those cases requiring
23 proximate cause also were broad, remedial, and liberally construed statutes. *See, e.g.,*
24 *Holmes v. SIPC*, 503 U.S. 258, 274 (1992) (interpreting RICO as imposing a
25 proximate-cause, directness requirement despite being “liberally construed to
26

27 made in *Fleites*. *See* Opp. at 69. To the extent not addressed here, Redwood fully
28 incorporates the arguments made in its *Fleites* Reply. *See Fleites* Reply at 5-7.

⁸ *See* note 7 *supra*.

1 effectuate its remedial purposes["]); *Associated Gen. Contractors of Cal., Inc. v. Cal.*
2 *Council of Carpenters*, 459 U.S. 519, 530 (1983) (imposing proximate cause
3 requirement under antitrust statutes).

4 The *Fleites* Opposition next argues that the *Fleites* SAC “alleges the requisite
5 link between [Redwood’s] conduct and Plaintiff[s]’ harm” because this Court “has
6 already determined that *Visa*’s support and facilitation of MindGeek’s monetization
7 of sex trafficking was the proximate cause of Plaintiff’s injuries.” *Fleites* Opp. at 62
8 (emphasis added). But that argument fails here, just as in *Fleites*. See *Fleites* Reply
9 at 7. First, the Court in *Fleites* did not find *Visa*’s conduct was the “proximate cause
10 of Plaintiff’s injuries,” only that *Visa*’s argument was “unpersuasive to the Court at
11 this stage of the case.” See *Fleites*, 617 F. Supp. 3d at 1164. Second, the facts specific
12 to *Visa* are easily distinguishable from the allegations against Redwood. While *Visa*
13 allegedly processed payments for advertisements placed alongside CSAM videos
14 (including *Fleites*), see *Fleites*, 617 F. Supp. 3d at 1164-65, Redwood is only alleged
15 to have provided partial financing to borrowers who were not Plaintiffs or their
16 traffickers.⁹ See Mot. at 22-23. As in *Fleites*, Plaintiffs’ alleged harms here are
17 simply “too remote” from Redwood’s alleged conduct (lending), and therefore
18 Plaintiffs fail to satisfy proximate cause. See *Lexmark Int’l, Inc. v. Static Control*
19 *Components, Inc.*, 572 U.S. 118, 133 (2014).

20 **3. Plaintiffs Fail to Establish Redwood’s Beneficiary Liability.**

21 Plaintiffs also fail to establish that: (1) Redwood “participated in a venture”
22 that harmed Plaintiff; and (2) Redwood “knew or should have known” of Plaintiffs’
23 sex trafficking, as required by the TVPRA. Mot. at 23-28. These inevitable
24 conclusions flow directly from this Court’s prior “participation” ruling in *Fleites*,

25
26 ⁹ Plaintiffs also argue (via the *Fleites* Opposition) that Redwood’s “considerable
27 influence and control over MindGeek’s business” establish proximate cause. *Fleites*
28 Opp. at 62. But, unlike in *Marceau v. Int’l Bhd. of Elec. Workers Local 1269*, 2006
WL 1889600 (D. Ariz. July 7, 2006), Plaintiffs allege no instance of *actual control*
over MindGeek’s business.

1 which requires direct interaction with a plaintiff’s traffickers. *See id.* Plaintiffs
2 ignore this Court’s prior holding and Ninth Circuit precedent, instead arguing for the
3 application of inapposite out-of-circuit case law. *See, e.g.,* Opp. at 5-9, 17-22. This
4 Court should decline the invitation to reverse itself and defy applicable precedent.

5 **a. Redwood did not “Participate in a Venture.”**

6 **i. Judge Carney’s Decision in *Fleites* is**
7 **Controlling.**

8 Plaintiffs’ Complaints do not adequately allege Redwood directly
9 “participated in a venture” that harmed them. Mot. at 24-26. This Court has already
10 explicitly held, in dismissing a beneficiary liability claim against Visa, that a
11 similarly-situated plaintiff (*Fleites*) did not plausibly allege participation as to Visa
12 because she failed to allege Visa had “*any direct interaction with [her], her direct*
13 *traffickers, or her videos[]*” and therefore could not be liable for “knowingly
14 *participating* in the sex trafficking venture that harmed Plaintiff.” Mot. at 24 (citing
15 *Fleites*, 617 F. Supp. 3d at 1161-62). This same rationale applies with full force to
16 Redwood. Mot. at 24-26. Plaintiffs identify no reason why this Court should reverse
17 itself on this key legal standard.

18 **ii. Plaintiffs Do Not Allege Participation in a**
19 **Venture Because They Do Not Allege a “Direct**
20 **Association” or “Continuous Business**
Relationship” Between Redwood and Plaintiffs’
Traffickers.

21 Plaintiffs also do not establish “participation” because they do not allege a
22 continuous business relationship *between Redwood and their traffickers*. Mot. at 18-
23 19, 24-26. This Court held—and other courts in the Ninth Circuit (and around the
24 country) agree—that “participation” requires a plaintiff to allege the defendant’s
25 “continuous relationship with or tacit agreement with *Plaintiff[s]’ . . . traffickers[.]*”
26 *Fleites*, 617 F. Supp. 3d at 1162 (emphasis added). *See also* Mot. at 24-25.

27 Plaintiffs once again ignore this Court’s decision in *Fleites* and argue that they
28 need not allege a “continuous business relationship” between Redwood and their

1 traffickers. *See* Opp. at 8 (citing *Fleites* Opp. at 10-11). But Plaintiffs are wrong, as
2 courts within the Ninth Circuit clearly require such a showing. *See, e.g., J.B. v. G6*
3 *Hosp., LLC*, 2020 WL 4901196, at *9 (N.D. Cal. Aug. 20, 2020) (when there is no
4 “direct association” between a trafficker and the defendant, a plaintiff must allege at
5 least “a showing of a continuous business relationship between the trafficker and the
6 [defendant] such that it would appear that the trafficker and the [defendant] have
7 established a pattern of conduct or could be said to have a tacit agreement.”)
8 (alterations in original) (emphasis added); *B.J. v. G6 Hosp., LLC*, 2023 WL 3569979,
9 at *5 (N.D. Cal. May 19, 2023) (dismissing TVPRA claim for failure to show “any
10 kind of ‘tacit agreement’” between defendant and the plaintiff’s trafficker in the
11 alleged sex trafficking venture); *Doe v. Mindgeek USA Inc.*, 558 F. Supp. 3d 828,
12 837 (C.D. Cal. 2021) (“In the absence of direct association with traffickers, Plaintiff
13 must ‘allege at least a showing of a continuous business relationship between the
14 trafficker and [Defendants] such that it would appear that the trafficker and
15 [Defendants] have established a pattern of conduct or could be said to have a tacit
16 agreement.’”) (internal citations omitted); *B.M. v. Wyndham Hotels & Resorts, Inc.*,
17 2020 WL 4368214, at *5 (N.D. Cal. July 30, 2020) (finding no “participation” where
18 plaintiff failed to “connect the dots between [her] alleged sex trafficking” and the
19 participant defendants).

20 Plaintiffs’ reliance on the Seventh Circuit’s holding in *Salesforce* is misplaced.
21 *See* Opp. at 7. In *Salesforce*, the court held that plaintiffs adequately alleged
22 Salesforce was liable as a participant under Section 1595 for “knowingly benefit[ing]
23 from its participation in what it knew or should have known was Backpage’s
24 sex-trafficking venture.” *See G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 548 (7th Cir.
25 2023). The court found that plaintiffs “plausibly alleged . . . a ‘continuous business
26 relationship[]’” between the participant defendant (Salesforce) and the trafficker
27 (Backpage), because Salesforce provided Backpage with “‘targeted solutions
28 addressed to the needs of Backpage’s business,’ repeatedly assessed Backpage’s

1 ‘operational needs,’ and provided ‘active, ongoing support’ that was ‘tailored’ to
2 those needs.” *See id.* at 560 (footnote omitted). Critically, the plaintiffs in *Salesforce*
3 alleged that defendant Backpage *was itself a sex trafficker* (or “perpetrator”), rather
4 than a “participant.” *See Salesforce*, 76 F.4th at 561. The court held that:
5 “[a]ccording to the allegations in plaintiffs’ complaint, *Backpage was also a sex*
6 *trafficker* [in addition to plaintiff’s street-level traffickers].” *Id.* Contrary to
7 Salesforce’s assumptions, therefore, Salesforce was not one step removed from
8 G.G.’s traffickers. “***It was in a direct, prolonged, and supportive contractual***
9 ***relationship with one of those sex traffickers—Backpage.***” *Id.* at 561 (emphasis
10 added). Plaintiffs argue—without support—that the court’s findings in *Salesforce*
11 “did not depend *just* on the allegation that Backpage itself was a direct trafficker.”
12 *See Opp.* at 9 (emphasis added). But this simply ignores that the vast majority of the
13 Seventh Circuit’s analysis regarding “participation” focused on plaintiffs’ plausible
14 allegations of a direct, “continuous business relationship” between participant
15 Salesforce and the alleged trafficker, Backpage. *See Salesforce*, 76 F.4th at 559-65.
16 Redwood is not alleged to have had any direct contact with or even knowledge of the
17 Plaintiffs or their traffickers.

18 Plaintiffs then cite to two more out-of-circuit cases to argue that “[i]t is
19 sufficient [for participation] that the ‘continuous business relationship’ be among
20 those alleged to be participants in the venture and that one of the participants in the
21 venture is guilty of a violation of Section 1591(a)(2).” *Opp.* at 8. In addition to
22 contradicting this Court and the Ninth Circuit’s standard for participation, the cases
23 are also factually distinguishable. First, in *S.C. v. Hilton Franchise Holding LLC*,
24 2024 WL 4773981, at *5 (D. Nev. Nov. 12, 2024), the court found—without
25 addressing the “participation” element as to Hilton—that Hilton benefitted from a
26 venture that engaged in sex trafficking because its franchisee’s “employees were
27 under a duty to inform Hilton of suspected trafficking, and . . . *did [in fact] inform*
28 *Hilton of suspected trafficking during the relevant time period, including [plaintiff]*

1 *S.C.’s trafficking.” Id.* (emphasis added). Hilton also had extensive control over its
2 franchisee’s operations and was made aware of the direct trafficker’s suspicious
3 activity through Hilton’s room reservation software, which was used to reserve the
4 rooms for the trafficker. *Id.* at *2. Again, nowhere in the Complaints do Plaintiffs
5 allege that Redwood knew or should have known of Plaintiffs’ actual trafficking or
6 had any interaction with Plaintiffs’ traffickers.

7 Second, in *Doe (L.M.) v. 42 Hotel Raleigh, LLC*, 2024 WL 4204906 (E.D.N.C.
8 Sept. 16, 2024), the court did not address the “continuous business relationship
9 standard.” However, in discussing the franchisor hotel’s (Hilton) participation in a
10 venture, the court recognized that the plaintiff sufficiently alleged that “Hilton
11 *facilitated* trafficking, not that Hilton just quietly observed it.” *Id.* at *3 (emphasis
12 added). Those allegations included that “Hilton exercised ‘systemic control’ over
13 [the franchisee hotel], including by issuing policies and procedures governing
14 security, payment, training, and other circumstances. At the time of [the plaintiff’s]
15 trafficking, Hilton allegedly knew that use of its properties for sex trafficking was a
16 widespread problem, that [franchisee] staff were not taking reasonable steps to deter
17 or detect sex trafficking, that Hilton’s own efforts were not effective, and that its
18 policies and practices were facilitating sex trafficking.” *Id.* at *2. The court
19 ultimately sustained the beneficiary liability claim against Hilton, including because
20 plaintiff alleged the franchisee employees “developed an ‘implicit understanding’”
21 with plaintiff’s traffickers, knew her trafficker’s name and addressed him by his
22 “pimp name,” and “checked in while plaintiff stood to the side visible” and exhibiting
23 indicia of sex trafficking. Importantly, the plaintiff alleged that the franchisee hotel
24 “functioned as the *legal agent of [franchisor] Hilton[,]*” *id.* at *2, and the court
25 “conclude[d] [the franchisee] . . . *was indeed Hilton’s agent*, at least at the Rule 12
26 stage.” *Id.* at *5 (emphases added). Here, Plaintiffs’ complaints fall far short of the
27 allegations against Hilton in *Doe (L.M.)*. And, unlike Hilton, Redwood had no
28 interaction with or knowledge of Plaintiffs’ traffickers, nor has it been or could it be

1 alleged to be MindGeek’s agent.

2 Finally, Plaintiffs assert that they need only plead “Redwood’s participation in
3 a *commercial* venture with MindGeek,” as opposed to a “continuous business
4 relationship” between Redwood and Plaintiffs’ *traffickers*.¹⁰ Opp. at 20. But none
5 of the cases in the cited portion of the *Fleites* Opposition hold that a plaintiff may
6 establish “participation” (let alone participation in a *sex trafficking venture*) by
7 alleging “only . . . participation in a commercial venture” with another participant
8 defendant, rather than the trafficker. See Opp. at 20-21; *cf. Salesforce*, 76 F.4th 559
9 (“Where the participant provides assistance, support, or facilitation *to the trafficker*
10 through such a ‘continuous business relationship,’ a court or jury may infer that the
11 participant and trafficker have a ‘tacit agreement’ that is sufficient for ‘participation’
12 under Section 1595.”) (emphasis added); *T.E. v. Wyndham Hotels & Resorts, Inc.*,
13 2024 WL 474400, at *6 (S.D. Ohio Feb. 7, 2024) (holding that participation in a
14 venture under § 1595 requires “at least a showing of a continuous business
15 relationship between *the trafficker and the [defendant] hotels*”) (emphasis added);
16 *J.C. v. Choice Hotels Int’l, Inc.*, 2020 WL 6318707, at *7 (N.D. Cal. Oct. 28, 2020)
17 (finding “participation” adequately alleged where plaintiff “connected the dots”
18 between her sex trafficking and the defendants by pleading that defendants provided
19 lodging to plaintiff’s traffickers); *Acevedo v. eXp Realty, LLC*, 713 F. Supp. 3d 740,
20 783 (C.D. Cal. 2024) (“a plaintiff must allege *the defendant* had a direct association
21 or a business relationship *with their trafficker*[] . . .”) (emphasis added); see also
22 *Fleites* Reply at 13, note 8 (addressing “participation” cases in *Fleites* Opp. at 21-
23

24 ¹⁰ Notably, Plaintiffs’ Complaints do not allege a *commercial venture* with
25 MindGeek. To the contrary, Plaintiffs allege that Redwood participated in a *sex*
26 *trafficking venture*. Compare K.A. Compl. ¶ 346 (“Defendants Redwood and
27 Colbeck *participated in the MindGeek sex trafficking venture* by participating in the
28 financing syndicates that funded MindGeek’s operations and growth”) (emphasis
added) with *42 Hotel Raleigh*, 2024 WL 4204906, at *5 (pleading explicitly alleged
that defendants participated in “a commercial venture,” as opposed to a sex
trafficking venture).

1 27). Regardless, Plaintiffs’ pleadings do not allege a commercial venture with
2 MindGeek. To the contrary, Plaintiffs allege that Redwood participated in a *sex*
3 *trafficking venture*.

4 Simply put, to establish “participation” under Ninth Circuit (and majority)
5 precedent, the alleged “continuous business relationship” must be between Redwood
6 and Plaintiffs’ *traffickers* (e.g., Plaintiffs’ ex-boyfriends, now-convicted sex-
7 trafficking felons, and/or sex-trafficking enterprises). But Plaintiffs fail to plead *any*
8 facts in the Complaints linking Redwood to any of *Plaintiffs’ traffickers* (e.g., ex-
9 boyfriends and sex-trafficking offenders). Mot. at 26. Plaintiffs do not contend
10 otherwise in their Opposition. Because Plaintiffs have not established that Redwood
11 had a “direct association” or “continuous business relationship” with *Plaintiffs’*
12 *traffickers*, as is required, their claims against Redwood must be dismissed.

13 **b. Plaintiffs Fail to Allege that Redwood Knew or**
14 **Should Have Known of *Plaintiffs’* Sex Trafficking.**

15 The Complaints also fail to allege that Redwood “knew or should have known”
16 of *Plaintiffs’ specific sex trafficking*, which this Court has already held is a necessary
17 precondition to liability. *See* Mot. at 26-28; *see also Fleites*, 617 F. Supp. 3d at 1162
18 (dismissing TVPRA claim against Visa because plaintiff failed to allege “any
19 knowledge – constructive or otherwise – of *Plaintiff*, her videos, or her age in the
20 videos”) (emphasis added).

21 Courts within the Ninth Circuit have consistently required constructive
22 knowledge of the *specific plaintiff’s* sex trafficking to satisfy the “knowledge” prong
23 of beneficiary liability. *See* Mot. at 26-28. In *MindGeek USA*, 558 F. Supp. 3d at
24 839, for instance, the court found that the plaintiff had sufficiently alleged knowledge
25 of her sex trafficking—specifically, “that Defendants knew or should have known
26 *that plaintiff was the victim of sex trafficking at the hands of [the] user who posted*
27 *the content.*” *Id.* (alterations omitted) (emphasis added) (citation omitted). Similarly,
28 in *J.C.*, 2020 WL 6318707, at *6, the plaintiff provided “plausible allegations to show

1 that the[] defendants had actual and/or constructive knowledge about *her* sex
2 trafficking as opposed to just sex trafficking problems in the hospitality industry in
3 general.” *Id.* (emphasis in original). Finally, in *B.M. v. Wyndham Hotels & Resorts,*
4 *Inc.*, 2020 WL 4368214 (N.D. Cal. July 30, 2020), the court found that while the
5 plaintiff’s allegations “support[ed] a theory that the staff at the *franchisee hotels*
6 where Plaintiff was trafficked knew or should have known *about her trafficking*,” her
7 allegations failed to establish liability against the franchisor because they failed to
8 show how *the franchisor or parent of the ultimate parent of franchisor* “knew or
9 should have known [she] was being trafficked.” *Id.* at *6 (emphasis added).

10 Plaintiffs argue that Redwood’s reliance on *B.M.* is “unavailing,” because the
11 “complaint [in *B.M.*] failed to allege any facts as to how the corporate franchisors
12 knew or should have known of sex trafficking at their branded hotels, pleading only
13 the knowledge of the branded hotel defendants.” *Opp.* at 22. As a threshold issue,
14 no subsidiary or company related to Redwood (like a franchisee) is alleged to have
15 knowledge of *Plaintiffs’ trafficking*. Redwood’s relationship to MindGeek, as a
16 lender, is far more attenuated than the relationship between the defendants in *B.M.*
17 Additionally, the *B.M.* plaintiff, contrary to Plaintiffs’ protestations, did in fact allege
18 knowledge based on the corporate defendants’ awareness of “acts of sex trafficking
19 tak[ing] place in [corporate defendants’] *franchisee hotels*[,]” not merely “report[s]
20 in the *hospitality industry*” generally. *See* 2020 WL 4368214 at *5; *Opp.* at 22-23,
21 note 14 (emphases added). This was still insufficient to allege the franchisor’s
22 knowledge. The alleged generalized reporting in the media of potential CSAM and
23 non-consensual content on MindGeek’s websites is even more generalized and
24 remote than the reports of sex trafficking at franchisee hotels alleged in *B.M.* The
25 reports cited by Plaintiffs—even accepting Plaintiffs’ incorrect implication that they
26 were “widely known” in general, or known by Redwood in particular, *see, e.g.,* K.A.
27 Compl. ¶¶ 162-63, 248—simply cannot adequately establish the requisite knowledge
28

1 by Redwood of Plaintiffs’ specific CSAM.¹¹ See *B.M.*, 2020 WL 4368214, at *5.

2 Relying on non-binding cases from the Southern District of New York
3 (*Deutsche Bank*) and the Seventh Circuit (*Salesforce*), Plaintiffs nevertheless contend
4 that knowledge as to a specific plaintiff’s trafficking is not required. But the out-of-
5 circuit cases Plaintiffs rely upon provide no basis to deviate from Judge Carney’s
6 ruling in *Fleites*. In fact, *Deutsche Bank* recognized that other courts *have required*
7 plaintiff-specific knowledge, but held that out-of-circuit decisions that require such
8 knowledge “do not control this Court.” See *Doe 1 v. Deutsche Bank*
9 *Aktiengesellschaft*, 671 F. Supp. 3d 387, 406-07 (S.D.N.Y. 2023); see also *Doe (L.M.)*
10 *v. 42 Hotel Raleigh, LLC*, 717 F. Supp. 3d 464, 468 & n.6 (E.D.N.C. 2024) (citing
11 the “circuit split” regarding whether the “knowledge” and “participation” elements
12 of beneficiary liability are “victim-specific”). Plaintiffs identify no reason why this
13 Court should deviate from Judge Carney’s prior ruling in *Fleites* and other courts
14 within the Ninth Circuit. See Mot. at 26-28.

15 Plaintiffs’ failure to establish any actual or constructive knowledge by
16 Redwood of “*Plaintiff[s], [their] videos, or [their] age in the videos[]*” dooms their
17 beneficiary liability claims, requiring their dismissal.¹² See *Fleites*, 617 F. Supp. 3d
18 at 1162 (emphasis added) (footnote omitted).

20 ¹¹ Similarly, the existence of a 2016 lawsuit against a third-party content creator—
21 filed *after* Redwood decided to participate in financing with MindGeek—does not
22 establish Redwood’s knowledge of Plaintiffs or their CSAM. See Opp. at 22-23, note
23 14.

24 ¹² As a last-ditch effort, Plaintiffs allege that “constructive knowledge is a
25 fact-intensive inquiry that is not appropriately resolved on a motion to dismiss.” Opp.
26 at 6 (citing *Barnett v. County of Los Angeles*, 2021 WL 826413, at *8 (C.D. Cal. Mar.
27 4, 2021)). Not so. The *Barnett* case holds that, *where actual or constructive*
28 *knowledge is sufficiently alleged to survive a 12(b)(6) motion*, the questions of such
knowledge are questions of fact to be determined at trial. See *Barnett*, 2021 WL
826413, at *8 (holding that plaintiff had “sufficiently alleged [the] existence [of
actual or constructive knowledge] to survive a 12(b)(6) motion”) (alterations added)
(citations omitted). Sufficient allegations have not been pled here.

**c. Non-U.S. Plaintiffs Cannot State a TVPRA
Beneficiary Liability Claim Against Redwood.**

The Non-U.S. Plaintiffs’ civil TVPRA claims against Redwood should be dismissed as an impermissible extraterritorial application of Section 1595. *See* Mot. at 28-29. Plaintiffs do not dispute that “[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application,” and that to overcome that presumption, the statute must give “a clear, affirmative indication that it applies extraterritorially.” *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 335, 337 (2016). Nor do they challenge the Supreme Court’s guidance that where “a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms.” *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 265 (2010) (citation omitted).

Despite recognizing their burden, Plaintiffs fail to demonstrate that the TVPRA evidences a clear, affirmative congressional intent to allow *private plaintiffs* to bring TVPRA claims for overseas injuries. *See* Mot. at 28-29. Critically, Congress amended the TVPRA in 2008 to add Section 1596, which explicitly authorizes extraterritorial application for specific *criminal* sections of the TVPRA. *See* 18 U.S.C. § 1596(a); Pub. L. No. 110-457, § 223(a), 122 Stat. 5044 (2008). *No such amendment was ever enacted to permit extraterritorial application for civil liability.* Congress could have, but did not, grant extraterritorial jurisdiction over Section 1595 offenses. *See Doe I v. Apple Inc.*, 2021 WL 5774224, at *16 (D.D.C. Nov. 2, 2021) (holding that Congress did not authorize the extraterritorial application of § 1595), *aff’d*, 96 F.4th 403 (D.C. Cir. 2024).

Plaintiffs nevertheless respond that the “structure and context of section 1595 . . . provides ‘a clear, affirmative indication’ that it applies to foreign conduct.” Opp. at 35. Plaintiffs’ primary argument in support stems from the novel theory, propounded in *Roe v. Howard*, 917 F.3d 229 (4th Cir. 2019) (and apparently followed

1 by an unpublished District of D.C. case)¹³ that “even absent an express statement of
2 extraterritoriality, a statute may apply to foreign conduct insofar as it clearly and
3 directly incorporates a predicate statutory provision that applies extraterritorially.”
4 *See Howard*, 917 at 242; Opp. at 34-35 (arguing that “section 1595 specifically
5 incorporates predicate offenses that govern foreign conduct,” and therefore may also
6 apply extraterritorially). But while *Howard* purported to interpret 1595(a), the Ninth
7 Circuit has already noted that *Howard* “includes no textual analysis of § 1595(a)
8 *whatsoever*[.]” *Ratha v. Rubicon Res., LLC*, 111 F.4th 946, 965 (9th Cir. 2024)
9 (emphasis added). The Fourth Circuit’s theory in *Howard* is therefore already very
10 much in doubt in the Ninth Circuit.

11 The fact that an underlying *criminal provision* governs conduct in foreign
12 countries is also precisely what the Supreme Court’s seminal case on
13 extraterritoriality, *RJR Nabisco*, said “is not enough” to show that a private right of
14 action applies extraterritorially. 579 U.S. at 350. In *RJR Nabisco*, the Supreme Court
15 expressly rejected the Second Circuit’s holding that “a RICO plaintiff may sue for
16 foreign injury that was caused by the violation of a predicate statute that applies
17 extraterritorially, just as a substantive RICO violation may be based on
18 extraterritorial predicates.” *Id.* at 350. Any reading to the contrary would “fail[] to
19 appreciate that the presumption against extraterritoriality must be applied separately
20 to both RICO’s substantive prohibitions and its private right of action.” *Id.* The
21 Supreme Court grounded its decision regarding RICO’s private right of action in a
22 long line of precedent addressing the potential for private lawsuits to cause
23 “international friction” by seeking to regulate conduct abroad. *See id.* at 346–49.
24 Neither Plaintiffs nor the *Howard* court mention that consideration, despite the
25

26
27 ¹³ *United States ex rel. Hawkins v. ManTech Int’l Corp.*, 2024 WL 4332117 (D.D.C.
28 Sept. 27, 2024). *ManTech* contradicts *Doe I*, the District of D.C. decision that
concluded the TVPRA did *not* apply extraterritorially.

centrality of this concept in the Supreme Court’s extraterritoriality jurisprudence.¹⁴

Finally, Plaintiffs make a last-ditch argument that the focus of Section 1595 is on extraterritorial conduct because “Congress has repeatedly referenced trafficking as a ‘transnational’ crime[.]” Opp. at 35. The fact that trafficking is considered a transnational *crime* has no bearing on whether the *civil provision* applies extraterritorially.¹⁵ The Non-U.S. Plaintiffs’ TVPRA civil TVPRA claims must therefore be dismissed.

4. Plaintiffs Fail to Allege a Conspiracy Claim Against Redwood Under the TVPRA.

a. The TVPRA Conspiracy Claim Against Redwood is Barred by Ninth Circuit Law.

Redwood’s Motion established that Plaintiff’s TVPRA conspiracy claim is definitively barred by the Ninth Circuit’s decision in *Ratha*. Mot. at 29-30. *Ratha* unambiguously holds that ATRA—which amended Section 1595 to provide a cause of action for whoever “*attempts or conspires to benefit*, financially or by receiving

¹⁴ Plaintiffs also attempt to distinguish *RJR Nabisco*’s analysis by suggesting that it “hinges on the unique structure of the RICO statute.” Opp. at 34. Specifically, Plaintiffs claim that the *RJR Nabisco* court refused to read the extraterritoriality provision into the civil provision of RICO *because* RICO’s civil cause of action only applied to certain injuries (and, therefore, was not wholly coextensive with its criminal counterpart). In other words, Plaintiffs suggest that the *RJR Nabisco* court was unwilling to read extraterritoriality into the civil provision of RICO because of this difference. But Plaintiffs are misguided. *RJR Nabisco*’s determination that the civil provision of RICO did not apply extraterritorially *did not hinge* on the so-called “gap” between the civil and criminal provisions. Primarily, the Court did not find a clear indication that Congress had “intended to create a private right of action for injuries suffered” extraterritorially in RICO’s civil provision. It simply noted, as an afterthought, that “[i]f anything,” this gap corroborated the lack of extraterritoriality the Court had already found to exist. *RJR Nabisco*, 579 U.S. at 349-50.

¹⁵ The “focus” is rather on where the alleged injury occurred, which, for the Non-U.S. Plaintiffs, is abroad. *See Doe I*, 2021 WL 5774224, at *16 (“Plaintiffs do not (and cannot) contest that their injuries, along with the underlying TVPRA violations that they allege, occurred anywhere other than in the DRC.”) (alteration in original).

1 anything of value from participation in a venture which that person knew or should
2 have known has engaged in an act in violation of” the TVPRA, *see* 18 U.S.C. 1595(a)
3 (emphasis added)—“*does not apply to pre-enactment conduct[.]*” *Ratha*, 111 F.4th
4 at 969 (emphasis added). Because ATRA does not apply to pre-enactment conduct,
5 *Ratha*, 111 F.4th at 969, Redwood cannot be liable for conspiracy liability based on
6 conduct that allegedly occurred prior to ATRA’s enactment. *See* Mot. at 28-29.

7 Plaintiffs incorporate by reference the arguments made in the *Fleites*
8 Opposition, which puzzlingly claim that *Ratha*’s holding does not apply because
9 “*Ratha* addressed attempt liability, not civil conspiracy.”¹⁶ *Fleites* Opp. at 37. While
10 the plaintiffs in *Ratha* asserted attempt as opposed to conspiracy liability, *Ratha*’s
11 holding and analysis preclude severing the phrase “attempts or conspires” into
12 separate components for the retroactivity analysis. In *Ratha*, the court first analyzed
13 whether the *statute as a whole* has retroactive effect—which included an analysis of
14 “textual indications” from the amendment *as a whole*. *See, e.g., Ratha*, 111 F.4th at
15 963 (“*ATRA* contains no ‘express command’ to apply *the statute* retroactively to
16 events that occurred before *its enactment*. If it were so applied, *ATRA* would
17 ‘increase a party’s liability for past conduct,’ . . . because it allows a civil penalty to
18 be assessed on **a new class of defendants: those who attempt or conspire to benefit**
19 **from a TVPRA violation**”) (emphasis added); *see id.* at 967 (“Other than the reference
20 to *the amendment* as a ‘clarifying update’ in the title, there are no other textual
21 indications from Congress that it extended to restore the language of §1595(a) as
22 enacted in the TVPRA to what *the statute* had always meant.”) (emphasis added).
23 After conducting this textual analysis, the court concluded that “*ATRA does not apply*
24 *to pre-enactment conduct, including* [but not limited to] *the conduct that is the basis*
25 *of plaintiffs’ claims.*” *Id.* at 969 (alteration added) (emphasis added). The *Fleites*
26

27 ¹⁶ Plaintiffs incorporate by reference the arguments made in *Fleites*. *See* Opp. at 27-
28 28. To the extent not addressed here, Redwood fully incorporates here the arguments
made in the *Fleites* Reply. *See Fleites* Reply at 15-16.

1 Opposition completely ignores the Ninth Circuit’s specific holding that “ATRA does
2 not apply to pre-enactment conduct,” which is conclusive here. Nothing in the Ninth
3 Circuit’s analysis or holding limited *Ratha*’s applicability to attempt liability.

4 The *Fleites* Opposition next argues that “[p]rior to ATRA, numerous circuit
5 and district courts have concluded that section 1595’s civil liability provision extends
6 to conspiracy claims under section 1594.” *Fleites* Opp. at 38. While these cases may
7 have (prior to *Ratha*) supported the proposition that a perpetrator’s conspiracy to
8 violate the TVPRA is actionable under Section 1595, not one of the cases cited in the
9 *Fleites* Opposition suggest that conspiring to benefit from *another’s violation of the*
10 *TVPRA* was civilly actionable under Section 1595(a) before ATRA. The Ninth
11 Circuit itself addressed many of the exact cases cited in the *Fleites* Opposition and
12 held that they “do not evidence any judicial difficulty interpreting the TVPRA[.]”
13 such that ATRA may have “clarified what the TVPRA had meant all along[.]” *See*
14 *Ratha* 111 F.4th at 963, 965.

15 Finally, the *Fleites* Opposition argues that ATRA’s “[h]istory [c]onfirms [its]
16 [r]etroactive [i]ntent.” *See Fleites* Opp. at 39. But, again, this exact same argument
17 was addressed and rejected by the Ninth Circuit in *Ratha*. *See Ratha*, 111 F.4th at
18 968 (explaining that “there is no contemporaneous legislative history regarding the
19 enactment of ATRA” that would be “indicative of Congress’s intent”). *Ratha* is
20 binding on this Court, and Plaintiffs’ claim for civil conspiracy liability based on
21 Redwood’s alleged conduct prior to 2023 must therefore be dismissed.

22 **b. The Complaints’ Allegations Do Not Establish a**
23 **Conspiracy Claim Against Redwood.**

24 Plaintiffs’ claims for conspiracy liability against Redwood also fail because
25 Plaintiffs do not allege any support for the proposition that Redwood agreed to or
26 intended to violate the TVPRA. Mot. at 19, 30-33. Plaintiffs instead assert that an
27 agreement may be inferred where “the defendant ‘entered into a joint enterprise with
28 consciousness of its general nature and extent’” and that intent may be inferred from

1 “circumstantial evidence of knowledge and an act in furtherance of the conspiracy.”
2 Opp. at 27. Plaintiffs, however, cite *no* case law inferring an agreement or intent
3 from acts similar to those alleged to have been taken by Redwood here.

4 Plaintiffs instead argue that Judge Carney’s conspiracy rationale in *Fleites* as
5 to Visa applies to all of the defendants. Opp. at 27. But Judge Carney found a
6 potential conspiracy claim against Visa on distinct allegations. Judge Carney
7 stressed that Visa’s intent to aid in MindGeek’s criminal act could be inferred
8 because Visa’s alleged conduct was “intertwined with MindGeek’s criminal act”—
9 specifically, MindGeek was “being sued for knowingly monetizing child porn,” and
10 “Visa’s act of continuing to recognize MindGeek as a merchant [was] *directly linked*
11 to MindGeek’s criminal act, as Visa’s act *served to keep open the means through*
12 *which MindGeek completed its [monetization of child porn].*” *Fleites*, 617 F. Supp.
13 3d at 1164 (alterations added) (emphases added). Redwood, on the other hand, is not
14 alleged to have “knowingly provided the tool used to complete [MindGeek’s] crime”
15 of “knowingly monetizing child porn.” *Fleites*, 617 F. Supp. 3d at 1164. Redwood
16 is merely alleged to have provided partial financing to MindGeek—an action
17 untethered to MindGeek’s alleged “criminal act.” The “bridge between [Redwood’s]
18 conduct”—providing partial financing—and an inference that Redwood intended to
19 assist MindGeek in knowingly benefiting from sex trafficking is therefore “too far”
20 and does not support conspiracy liability. *See* Mot. at 30-33.

21 **B. Plaintiffs’ Hybrid UCL/FAL Claim is Not Legally Viable.**

22 Plaintiffs cannot state a UCL claim or an FAL claim against Redwood.

23 *First*, Plaintiffs lack standing under both the UCL and FAL. As explained in
24 Redwood’s Motion, standing under the UCL and FAL is “substantially narrower”
25 than federal standing under Article III and extends only to those who “lost money or
26 property” as a result of the unfair competition or false advertising violation. Mot. at
27 34. Neither the Complaints nor the Opposition explain how *Redwood* directly caused
28 Plaintiffs’ alleged “financial harm” (which Plaintiffs contend is the use of their

1 “video, image[], or likeness”). See Mot. at 34-35; Opp. at 53-54. Moreover,
2 Plaintiffs *do not even contest* that they lack standing under either statute.

3 *Second*, neither the UCL nor FAL applies extraterritorially to Non-California
4 and Non-U.S. Plaintiffs. See Mot. at 35-37. Plaintiffs dispute this, but then fail to
5 distinguish the longstanding California precedent discussed in Redwood’s Motion
6 holding otherwise. See *id.* (citing, e.g., *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191
7 (2011); *Nw. Mortg., Inc. v. Superior Court*, 72 Cal. App. 4th 214, 222 (1999)).
8 Plaintiffs instead assert that “the harm underlying Plaintiffs’ state law claims did
9 indeed take place, at least in part, in California,” but then recite actions alleged to
10 have been taken by *other Defendants*. Opp. at 54, note 43. That is not enough to
11 establish extraterritoriality of the UCL or FAC as applied to Redwood. The
12 Complaints fail to allege that Redwood made any false or misleading statements at
13 all, let alone that they made any such statements in California. Nor do their
14 Complaints allege that Redwood engaged in any activity in California (or anywhere)
15 related to the creation or modification of content on MindGeek’s platforms or the
16 dissemination of Plaintiffs’ CSAM. The Non-California and Non-U.S. Plaintiffs do
17 not even allege that Redwood entered into the loan agreements in California.¹⁷

18 *Third*, Plaintiffs’ UCL and FAL counts simply fail to allege actions by
19 Redwood sufficient to state a viable legal claim under either California statute.

20 Plaintiffs’ FAL claim fails because it “rest[s] exclusively on allegations of
21 misconduct . . . [which] *do not apply to Redwood*.” Mot. at 37. Plaintiffs do not
22 explicitly address this argument. Instead, Plaintiffs try to pivot by suggesting that
23 the FAL claim against Redwood is based on “false claims” or “fraudulent omissions”
24

25 ¹⁷ Plaintiffs do not dispute that the analogous state statutes claims also fail to show
26 an unfair or deceptive practice by Redwood. See Mot. at 41-42. This is fatal to any
27 claims thereunder. See *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802
28 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) (“[F]ailure to respond in an opposition brief
to an argument put forward in an opening brief constitutes waiver or abandonment in
regard to the uncontested issue.”) (citations omitted).

1 on the part of *other Defendants*. See Opp. at 53-54 (describing “false statements” or
2 “misrepresentations” allegedly made by MindGeek and/or the Individual
3 Defendants). But in *Tortilla Factory, LLC v. Humm Kombucha, LLC*, the court
4 explained that “false advertising claims under the FAL and UCL must be based on
5 the defendant’s participation in or control over the unlawful practices They do
6 not arise from allegations of vicarious liability.” 2018 WL 11408921, at *9 (C.D.
7 Cal. July 25, 2018) (internal quotation marks omitted) (citations omitted). Here, by
8 Plaintiffs’ own admission, none of the conduct underlying the FAL claim “aris[es]
9 from” any false claim, misrepresentation, or omission on the part of the Redwood.
10 Accordingly, the claim must be dismissed.

11 As for their UCL claim, Plaintiffs attempt to clarify that it is based on the
12 statute’s “unlawful” prong and argue that because “[e]ach defendant’s participation
13 in the MindGeek venture in violation of the TVPRA . . . serves as [a] predicate wrong[]
14 under the UCL[,]” they state a claim under the UCL. Opp. at 53. But since Plaintiffs
15 fail to state a claim against Redwood under the TVPRA, the dependent UCL claim
16 must therefore be dismissed too. See Section III.A *supra*; see also Mot. at 37-38.

17 **C. Plaintiffs Fail to State a Claim for Intentional Infliction of**
18 **Emotional Distress.**

19 Redwood demonstrated in its Motion that Plaintiffs’ IIED claims fail because
20 Plaintiffs’ allegations are too conclusory and they fail to separate out the alleged role
21 of each Defendant. Plaintiffs additionally fail to allege: (i) that Redwood specifically
22 engaged in “atrocious” conduct that was intended to cause emotional distress to
23 Plaintiffs; (ii) that Redwood’s conduct was directed towards them; and (iii) that their
24 severe emotional distress was, in each case, actually and proximately caused by
25 Redwood’s alleged conduct. Mot. at 42-45.

26 Plaintiffs’ Opposition offers no case law establishing how Redwood’s routine,
27 arm’s-length financing agreements could conceivably constitute “extreme and
28 outrageous [conduct]” that “exceed[s] all bounds of that usually tolerated in a

1 civilized community.” *See* Mot. at 44 (citing *Chang v. Wachovia Mortg., FSB*, 2011
2 WL 5552899, at *3 (N.D. Cal. Nov. 15, 2011)). Seemingly acknowledging the lack
3 of “outrageous or extreme” conduct by Redwood, Plaintiffs instead endeavor to
4 impute MindGeek’s alleged conduct to Redwood. *See* Opp. at 44-45 (MindGeek’s
5 “exploitation of CSAM constitutes . . . outrageous conduct that exceed(s) the bounds
6 of that usually tolerated in a civilized community. . . . Both Colbeck and Redwood
7 permitted and condoned such behavior”). But Plaintiffs’ efforts to “bootstrap” an
8 IIED claim against Redwood are impermissible, as they must allege extreme and
9 outrageous conduct actually attributable to Redwood. *See Sanders v. Model Prods.*
10 *USA, Inc.*, 2015 WL 13914860, at *7 (C.D. Cal. Dec. 14, 2015) (dismissing
11 Intentional Infliction of Emotional Distress claim where “Plaintiffs lump the conduct
12 of all Defendants together.”); *Grant v. WMC Mortg. Corp.*, 2010 WL 2509415, at *3
13 (E.D. Cal. June 17, 2010) (IIED claim that “fails to indicate specifically what conduct
14 constituted intentional infliction of emotional distress and lumps all defendants
15 together is plainly insufficient under the pleading requirements of Federal Rule of
16 Civil Procedure 8.”).

17 Plaintiffs also fail to establish Redwood had the necessary intent for an IIED
18 violation. They argue that “the intentional act [need not] occur in the *presence* of
19 plaintiff,” and that Redwood’s “continued role in supporting and growing
20 MindGeek’s illegal activities” establishes Redwood’s “disregard” of Plaintiffs’
21 interests. Opp. at 45 and note 32. Contrary to Plaintiffs’ assertions, “where reckless
22 disregard of the plaintiff’s interests is the theory of recovery, the presence of the
23 plaintiff at the time the outrageous conduct occurs” is required. *Christensen v.*
24 *Superior Court*, 54 Cal. 3d 868, 906 (1991); *Potter v. Firestone Tire & Rubber Co.*,
25 6 Cal. 4th 965, 1002 (1993) (same); *Sepulveda v. City of Whittier*, 2019 WL
26 13070119, at *24 (C.D. Cal. Aug. 7, 2019) (“[T]he conduct must be . . . done with
27 knowledge of their presence and of a substantial certainty that they would suffer
28 severe emotional injury.”). Nowhere in the Complaints or the Opposition, however,

1 do Plaintiffs allege that Redwood took any action in the presence of any Plaintiff.
2 Plaintiffs' Opposition offers one inapposite Arizona Supreme Court case to support
3 their claim that Redwood had the requisite intent, but in that case, the court found an
4 employer was liable for its employee's harassment where the employer had
5 *knowledge* of such conduct. *See* Opp. at 45 (citing *Ford v. Revlon, Inc.*, 153 Ariz.
6 38, 43 (Ariz. 1987)). Plaintiffs here do not allege, nor could they, that Redwood had
7 knowledge of any Plaintiff's actual alleged exploitation.

8 Finally, Plaintiffs fail to address Redwood's arguments that: (i) Redwood's
9 conduct was not directed toward them; and (ii) that Redwood's conduct did not
10 actually and proximately cause Plaintiffs' harm. *See* Mot. at 45. Plaintiffs concede
11 that alleged outrageous conduct "need . . . be directed towards plaintiffs," yet they
12 make no showing that Redwood directed any conduct towards Plaintiffs. Opp. at
13 44-45; *see, e.g., Stichting Pensioenfonds ABP*, 802 F. Supp. 2d at 1132 ("[F]ailure to
14 respond in an opposition brief to an argument put forward in an opening brief
15 constitutes waiver or abandonment in regard to the uncontested issue.") (citation
16 omitted). Plaintiffs' IIED claims must be dismissed on these additional grounds.

17 **D. Plaintiffs Fail to State a Claim for Civil Conspiracy.**

18 Plaintiffs' civil conspiracy claims should also be dismissed, as they do not
19 plausibly allege that Redwood agreed or intended to join an illegal conspiracy when
20 it provided loans. Plaintiffs argue in opposition that "the elements of a common law
21 civil conspiracy are the same as those of conspiracy to violate the TVPRA," and so
22 the Complaints adequately allege Redwood "conspired to commit wrongful acts in
23 violation of various California state statutes[]" for the same reasons addressed in
24 connection with their 1594(a) claim. Opp. at 50-51.

25 But, for the reasons set forth in Redwood's Motion and in Section III.A.4
26 *supra*, Plaintiffs do not plead an agreement or intent by Redwood to violate the
27 TVPRA. *See* Mot. at 46-50. Simply put, agreeing to extend credit to a party that
28 allegedly engaged in unlawful conduct does not create a conspiracy between the

1 lender and the borrower to engage in such unlawful conduct. *See, e.g., Compound*
2 *Prop. Mgmt., LLC v. Build Realty, Inc.*, 462 F. Supp. 3d 839, 864-65 (S.D. Ohio 2020)
3 (“allegations that a lending company engaged in due diligence with regard to its
4 lending activities cannot, and should not, be enough to plausibly establish ‘joinder’
5 [in a conspiracy], even at the pleading stage”); *Young v. City of Menifee*, No. 5:17-
6 cv-01630-JGB-SP, 2019 WL 3037926, at *11 (C.D. Cal. Apr. 5, 2019) (“[m]ere
7 association does not make a conspiracy”).

8 Furthermore, speculation that a defendant *knew* of another’s planned conduct
9 (even if true) is insufficient to allege a civil conspiracy claim without evidence that
10 the defendant *intended* the actual conduct. *See* Mot. at 46-47 (citing *Thinking*
11 *Liberally Media Inc. v. Orange Juice Blog*, 2010 WL 11596144, at *5-6 (C.D. Cal.
12 Nov. 19, 2010)). Plaintiffs attempt to distinguish *Orange Juice Blog* by arguing that
13 the conspiracy claim failed because there were “no allegations about the participation
14 of Orange Juice Blog in the purported conspiracy from which the court could infer
15 intent.” Opp. at 53, note 41. But that is exactly the reason Plaintiffs’ claims must
16 fail here. Plaintiffs’ insistence that Redwood’s participation *in the financing*
17 *agreements* establishes an intent to aid in *sex trafficking* is wholly incongruous with
18 a routine, arm’s length financing agreement [REDACTED]
19 [REDACTED], in particular. Simply put, a plaintiff cannot
20 rely “solely on speculation and evidence of . . . knowledge” to establish intent. *See*
21 *Orange Juice Blog*, 2010 WL 11596144, at *6; *see id.* at *5 (“[A]ctual knowledge of
22 the planned tort, without more, is insufficient to serve as the basis for a conspiracy
23 claim[,]” as “[k]nowledge of the planned tort must be combined with intent to aid in
24 its commission.”) (citation omitted).

25 In their Opposition, Plaintiffs argue that Redwood’s intent can be “easily
26 inferred here” based on its “years-long relationship[] with MindGeek,” its “actual
27 knowledge of the extent of MindGeek’s criminal conduct,” and its “motives to
28 maximize [its] own profits.” Opp. at 51-52. Yet, Plaintiffs do not plead any facts

1 supporting Redwood’s alleged agreement or intent to aid in a violation of the
2 TVPRA. Plaintiffs state that Redwood’s “intent” to aid in the wrongful activity is
3 evidenced by “its intent to profit in spades” as well as Redwood’s “oust[ing]” of
4 “Colbeck so that it could keep a larger share of the profits[.]” Opp. at 52-53. Not
5 only does this ignore the Agent’s (as instructed by Redwood and other lenders)

6 [REDACTED]
7 [REDACTED], see Mot. at 17 and *Fleites* Dkt. 450-4, but
8 “simple knowledge, approval of, or acquiescence in the object or purpose of a
9 conspiracy, without an intention and agreement to accomplish a specific illegal
10 objective, is not sufficient.” *United States v. Lennick*, 18 F.3d 814, 818 (9th Cir.
11 1994) (emphasis added) (citation omitted). Plaintiffs’ allegations simply do not
12 “plausibly suggest that [Redwood] ever intended to assist [MindGeek] in the alleged
13 wrongful conduct” in the first place. See *Craigslist Inc. v. 3Taps Inc.*, 942 F. Supp.
14 2d 962, 982 (N.D. Cal. Apr. 30, 2013) (alterations added). Rather, their allegations,
15 at most, suggest that Redwood provided financing to MindGeek pursuant to routine
16 financing agreements despite “knowledge [] of” MindGeek’s illegal activity
17 (allegations which Redwood strenuously disputes). This is insufficient and
18 Plaintiffs’ rank “speculation” about Redwood’s intent does not forestall dismissal.
19 See *Orange Juice Blog*, 2010 WL 11596144, at *5-6.

20 Finally, Plaintiffs ignore Redwood’s argument that a conspiracy claim “allows
21 tort recovery only against a party who already owes [a] duty” to Plaintiffs. Mot. at
22 48-50. Because Redwood did not, and does not, owe any duty to Plaintiffs under
23 California law, Plaintiffs’ civil conspiracy claims must be dismissed. See *id.*

24 **IV. CONCLUSION**

25 For the foregoing reasons, Redwood respectfully requests that the Court
26 dismiss the Related Actions against Redwood with prejudice.

1 DATED: January 8, 2025

2 **PAUL HASTINGS LLP**

3
4 By: /s/ James M. Pearl

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Redwood Capital Management, LLC, certifies that this brief contains 30 pages, which complies with the 35-page limit set by court order dated August 2, 2024.

DATED: January 8, 2025

PAUL HASTINGS LLP

By /s/James M. Pearl
JAMES M. PEARL